IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/08/2002

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THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.32824 of 2002 and Writ Petition No.32827 of 2002

W.P.No.32824 of 2002

N. Vasantha .. Petitioner

Vs.

1. The Chairman
Tamil Nadu Housing Board
No.331, Anna Salai
Nandanam, Chennai 600 035.

2. Managing Director
Tamil Nadu Housing Board
No.331, Anna Salai
Nandanam, Chennai 600 035.

3. Executive Engineer and
Administrative Officer
Salem Division
Tamil Nadu Housing Board
Ayyan Thirumaligai Road
Salem 636 008. .. Respondents

W.P.No.32827 of 2002

C. Rajamani .. Petitioner

Vs.

1. The Chairman
Tamil Nadu Housing Board
No.331, Anna Salai
Nandanam, Chennai 600 035.

2. Executive Engineer and

Administrative Officer
Salem Division
Tamil Nadu Housing Board
Ayyan Thirumaligai Road
Salem 636 008. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr.S. Subbiah

For Respondents : Mr.D. Veerasekaran

:O R D E R

The petitioners, pursuant to the advertisement for allotment of independent houses developed, promoted and constructed by the respondents in Edapadi-Phase-II-Stage-II for Higher Income Group, applied for the same and they were allotted independent houses bearing Door Nos.A14 9 and A150, by proceedings dated 30.10.2000 and 25.8.2000 respectively. The tentative cost of the house were fixed at Rs.6,89,600/- and 6 ,94,200/- respectively and the petitioners were directed to pay 35% of the tentative cost, viz. a sum of Rs.2,75,000/- and Rs.2,77,680/- respectively, as advance. On compliance of the formalities required by the respondents, the payment of balance amount in monthly instalments under hire purchase agreement, the petitioners were given possession of the respective houses.

2. Thereafter, the respondents issued an advertisement in the dailies on 15.6.2002 proposing to sell unsold houses on first-come-first basis. In the advertisement, it was made clear that the allotment of the unsold houses notified in the advertisement shall be made on first-come-first basis, without any restriction to apply for the unsold house. The advertisement also carries the rate of the unsold houses, wherein the tentative cost of the unsold HIG house was fixed at Rs.4,83,000/-.

3. Placing reliance on the advertisement notifying the tentative cost of the unsold HIG houses as Rs.4,83,000/-, the petitioners made a representation to the respondent-Board to reduce the tentative cost of the houses allotted to them at Rs.6,89,600/- and 6,94,200/- respectively. Alleging that the respondent-Board had not considered their request, the petitioners made a further representation to the Hon' ble Chief Minister on 24.6.2002 and 18.6.2002 respectively, requesting to reduce the tentative cost of the houses allotted them, which was forwarded to the respondent-Board, who, by proceedings dated 22.7.2002 and 28.6.2002 respectively, which is impugned in these writ petitions, informed that the petitioners are not entitled to any reduction of the tentative cost as in the case of the reduced tentative cost notified for the unsold HIG houses.

4. Mr.S. Subbiah, learned counsel for the petitioners, placing reliance on the decision of the Apex Court in STYLE (DRESS LAND) v. UNION TERRITORY, CHANDIGARH, reported in 1999 (7) SCC 89, and SHRILEKHA VIDYARTHI (KUMARI) v. STATE OF U.P. reported in 1991 (1) SCC 212, contends that the refusal to extend the benefit of the reduced tentative cost fixed for the unsold HIG houses, as notified in the advertisement, to the petitioners, is arbitrary and unreasonable.

5. Mr.D. Veerasekaran, learned counsel appearing for the Housing Board, who takes notice on behalf of the respondents, contends that the respondents proposed to sell the unsold houses on first-come-first basis, through advertisement, permitting the general public to apply for the same, without imposing any restriction, pursuant to G.O.Ms.No.2 9, Housing and Urban Development Department, dated 22.1.2001, in order to prevent the loss suffered by the respondent-Board by not selling the houses. He also contends that the petitioners are not prevented to apply for the allotment of the unsold houses on first-come-first basis, pursuant to the advertisement dated 15.6.2002 and in any event, the petitioners are not entitled to claim the benefit of reduced tentative cost fixed for the unsold HIG houses, as the sale of the unsold HIG houses totally forms a different category from general allotment.

6. I have given careful consideration to the submissions of both sides.

7. It is true that the Apex Court in STYLE (DRESS LAND) v. UNION TERRITORY, CHANDIGARH, reported in 1999 (7) SCC 89, held as follows:

"The Government cannot act like a private individual in imposing the conditions solely with the object of extracting profits from its lessees. Governmental actions are required to be based on standards which are not arbitrary or unauthorised."

8. In the case of SHRILEKHA VIDYARTHI (KUMARI) v. STATE OF U.P. reported in 1991 (1) SCC 212, the Apex Court has held as under:
"... every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 and basic to the rules of law, the system which governs us, arbitrariness being the negation of the rule of law. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary in whatever sphere must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all powers must be for public good instead of being an abuse of power. Action of renewability should be gauged not on the nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual field. The State action which is not informed by reason cannot be protected as it would be easy for the citizens to question such an action as being arbitrary."

9. The ratios laid down by the Apex Court in STYLE (DRESS LAND) v. UNION TERRITORY, CHANDIGARH, reported in 1999 (7) SCC 89, and SHRILEKHA VIDYARTHI (KUMARI) v. STATE OF U.P. reported in 1991 (1) SCC 212, in the matter of arbitrary exercise of power prohibited under Article 14 of the Constitution of India, is not disputed. But, I am of the considered opinion that the said ratios are not applicable to the facts and circumstances of the case, as the petitioners had applied for allotment of house on different category and got the allotment even prior to the advertisement dated 15.6.2002, wherein the unsold houses were notified for sale at the reduced tentative cost on first-comefirst basis permitting all to apply. Admittedly, the petitioners have not chosen to either challenge the reduced tentative cost or apply for allotment of the unsold houses, and therefore, it is clear that the invitation to apply for the unsold houses at the reduced tentative cost, as notified in the advertisement forms a category by itself and such classification, in my considered opinion, is reasonable, and the same was intended to sell away all the unsold houses, even at the reduced tentative cost in order to prevent the loss being suffered by the Board by not selling the houses, after investing a considerable amount.

10. That apart, the houses allotted to the petitioners are prior to the advertisement dated 15.6.2002, which was made pursuant to the G. O.Ms.No.29, Housing and Urban Development, dated 22.1.2001, the benefit of which cannot be extended to the petitioners, as any concession that is granted for the sale of unsold houses forms a separate category by itself. Therefore, finding the sale of unsold houses constitutes a separate and reasonable classification, the petitioners cannot complain any discrimination much less arbitrary exercise of power, attracting Article 14 of the Constitution of India, particularly, when the petitioners were not restrained to apply for the sale of unsold houses, and the fact remains that they failed to avail the benefit.

Finding no merit in the writ petitions, the same are dismissed. No costs. Consequently, WPMP Nos.48821 and 48830 of 2002 are also dismissed.

Website : Yes
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To
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Order in
W.P.Nos.32824 & 32837
of 2002.